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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 429

TRAVELERS INDEMNITY COMPANY,
Petitioner,

v.

GREYHOUND LINES, INC., et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on May 4, 1967. No rehearing was applied for.

CITATIONS TO OPINIONS BELOW

The opinion of the United States District Court, Western District of Louisiana (R. 389) is reported at 260 F.Supp. 530. The opinion of the United States Court of Appeals for the Fifth Circuit (R. 433) is unreported. For convenience, the District Court's opinion and judg-

ment are printed in Appendix "A", infra, p. 24. The Court of Appeals' opinion and judgment are Appendix "B", infra, p. 37.

JURISDICTION

The judgment of the Fifth Circuit Court of Appeals was entered May 4, 1967 (R. 439). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether or not it is a denial of due process for a court to permit only a piecemeal use of the Federal Interpleader Act in cases involving multiple unliquidated tort claims arising out of the same accident.

STATUTE INVOLVED

The statute involved is the Federal Interpleader Act, c. 646, 62 Stat. 931, 28 U.S.C. 1335; c. 646, 62 Stat. 636, 28 U.S.C. 1397; and c. 646, 62 Stat. 970; c. 139 Sec. 117, 63 Stat. 105, 28 U.S.C. 2361.

STATEMENT

This application for writ of certiorari is made by Travelers Indemnity Company (Travelers), which was the automobile liability insurer of All Woods, Ltd. (All Woods), a limited partnership under the law of Texas. The insurance policy Travelers issued All Woods contained limits of liability of $300,000 for all persons injured in an accident, and a limit of $25,000

for all property damage (R. 122). This litigation results from a vehicular accident that occurred on August 27, 1965 at about 11:30 P.M. on U. S. Highway 90 west of Vinton, Calcasieu Parish, Louisiana. The accident involved a collision between a bus owned by Greyhound Lines, Inc. (Greyhound) and a 1964 Chevrolet truck and trailer owned by All Woods.

There were forty-six passengers on the Greyhound bus. As a result of the collision twelve passengers lost their lives, and a number of the passengers sustained various injuries. Following the accident suits were filed in Harris and Jefferson County, Texas; in the United States District Court for the Southern District of Texas, Houston Division; in the Fourteenth Judicial District Court, Calcasieu Parish, Louisiana, and in the United States District Court for the Western District of Louisiana, Lake Charles Division. The total damages prayed for in those suits amount to a sum in excess of seven million dollars. None of the suits has been tried.

Prior to this action, the Fourteenth Judicial District Court, Calcasieu Parish, Louisiana, in suit #66,692 (R. 251), declined to take jurisdiction of some of these cases under the Louisiana Declaratory Judgment Act on the grounds that Act could not be used to decide factual issues concerning negligence, and further decided that court did not have jurisdiction over the non-resident defendants (R. 277-285).

On September 23, 1966 the United States District Court, Western District of Louisiana, allowed the petitioner to file a bill in the nature of interpleader under

the Federal Interpleader Act. All interested parties were made defendants in this action, including All Woods, Greyhound and its driver. The defendants were ordered to show cause on October 24, 1966 why the relief prayed for should not be granted (R. 113).[1] The District Court's order contained the following provision:

> "* * * Meanwhile no further proceedings should be taken by defendants herein in any action in state or federal court dealing with this subject matter."

On November 4, 1966 the District Court rendered a judgment (R. 388), which, among other things, dissolved the restraining order it had issued; but en-

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[1]The prayer of the complaint in the nature of a bill of interpleader asked for the following relief:

"(1) That this bill in the nature of an interpleader be allowed and filed;

(2) That none of the defendants is entitled to recover from the plaintiff the amount of sai policy or any part thereof, and that said judgment be made accordingly;

(3) That each of the defendants be restrained from instituting or prosecuting any action in state or federal court against the plaintiff, its assured, All Woods, Ltd. and the partners thereof, or against any other defendant herein, for recovery of the amount of said policy or any part thereof until the further order of this Court;

(4) That the defendants be required to interplead and settled between themselves their rights, whatever they may be, to the amount of said policy, and that the plaintiff be discharged from all liability in the premises, except to the person whom the Court shall adjudge entitled to the amount of said policy, and for such other equitable relief as may be proper;

(5) That there be a trial by jury." (R. 113).

joined and restrained any defendants from execution of any judgments against Travelers for the recovery of the amount of its policy, or any part thereof, until further order of the District Court. The judgment[2] provided that if judgments were rendered against Travelers elsewhere, either directly or through its coverage of All Woods, the District Court would divide proportionately the fund among the claimants as their interest may appear. The District Court's judgment did not restrain a judgment creditor from attempting to execute a judgment against the assets of All Woods prior to asserting a claim against the fund deposited in the registry of the District Court. The petitioner filed a bond in the sum of $325,000 in conjunction with its bill in the nature of interpleader (R. 118). An appeal was taken from the District Court's judgment.

In a per curiam rendered May 4, 1967 the United States Court of Appeals, Fifth Circuit, affirmed the District Court judgment providing that no judgment can be executed against Travelers until further order of the District Court. The Court of Appeals based its holding on this court's opinion in *State Farm Fire and Casualty Company, et al v. Kathryn Tashire,* 386 U.S. 523, which held, inter alia, that the insurer properly invoked the jurisdiction of the Federal Interpleader Act, but was not entitled to an order enjoining suits against it outside the confines of the interpleader proceedings and in extending such protection to its insured, the alleged tortfeasor, and other alleged tortfeasors, it exceeded the power granted it by the Federal Interpleader Act.

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[2]Appendix "A" p. 36.

REASONS FOR GRANTING THE WRIT

1. The decision of the Fifth Circuit Court of Appeals denying the issuance of the injunction insofar as it failed to restrain prosecution of suits in Louisiana and Texas against All Woods, Travelers and other defendants herein, is unnecessarily restrictive. Such an interpretation of the Federal Interpleader Act would not appear justified under the circumstances. A bill in the nature of an interpleader under the Federal Interpleader Act, although statutory, is an equitable remedy. In *State of Texas v. State of Florida,* 306 U.S. 398, this court stated the purpose of that Act:

> "****The essential of the bill in the nature of interpleader is that it calls upon the court to exercise its jurisdiction to guard against the risks of loss from the prosecution in independent suits of rival claims where the plaintiff himself claims an interest in the property or fund which is subjected to the risk. The object and ground of the jurisdiction are to guard against the consequent depletion of the fund at the expense of the plaintiff's interest in it and to protect him *and the other parties to the suit* from the jeopardy resulting from the prosecution of numerous demands, to only one of which the fund is subject.***" (Emphasis supplied.)[3]

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[3]At p. 406, 407.

Travelers has deposited the total amount of its insurance policy into the registry of the court and has qualified completely under the Federal Interpleader Act, but still denying any liability to any claimants or to any of the defendants herein. This it has the right to do under 28 U.S.C. 1335. Petitioner submits that this narrow and restrictive interpretation has invalidated the congressional intent in the passage of the Federal Interpleader Act. Interpleader under the Act should be permitted liberally to relieve parties of the hazards and vexations of conflicting claims.

Where the language of a statute is plain and unambiguous, as here, and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation, therefore, it is not necessary for a court to look for or impose another meaning to the statute. It is to be presumed that the statute expresses the legislative will, and in this case the congressional will seems to be very clear indeed. The Fifth Circuit Court of Appeals has concluded that neither All Woods nor the other defendants are entitled to an order restraining the further prosecution of suits in various state and federal courts pending the disposition of the interpleader action. The Fifth Circuit Court of Appeals followed this court's rule in *Tashire* and held that since the scope of the litigation was vastly more extensive than the confines of the "fund", the insurer, petitioner, should not be able to determine that various claimants should pursue their recovery in the single forum allegedly chosen by the insurance company. There is no provision in the Federal Interpleader Act that disqualifies an insurance company, and for

that matter, any other type of company, from invoking the full provisions of the Act. It would seem reasonable that there is no ground for prohibiting the application of the Act simply because the fund is small in comparison to the total amount of the claims presently pending.

The present interpleader statute is remedial in nature. It is entitled to a liberal construction. *State Farm Fire and Casualty Company, et al v. Kathryn Tashire,* 386 U.S. 523, supra. Travelers has met all the requirements of the Federal Interpleader Act for jurisdiction and venue. It has established the essential and jurisdictional requirements set out in the Act and, therefore, its entitlement to relief is absolute. *Treinies v. Sunshine Mining Co.,* 308 U.S. 66.

2. The Court of Appeals' denial of the complete relief sought works great harm, injustice and irreparable injury not only to the petitioner but to the insured, All Woods, and the other defendants. By its decision, the Court of Appeals approved the dissolution of the restraining order and reinstated the District Court's order which enjoined the defendants from execution of any judgments against Travelers until further order of the District Court (R. 388). The District Court judgment also provided that where judgments were later rendered against Travelers elsewhere, either directly or through its coverage of All Woods, then the District Court would divide the fund *proportionately* among the claimants as their interest may appear. The judgment stayed all executions against the fund until the last claim is litigated. Execution of any judgment

against All Woods or any other defendant was not enjoined. Thus All Woods must face possible execution of judgments with no primary insurance coverage.

If other state or federal courts tried the various cases, it is possible All Woods could be found liable, as a result of which the successful litigants would attempt execution directly against All Woods. Naturally, All Woods would promptly demand indemnification from Travelers to the limits of its insurance coverage. Travelers could successfully resist payment, if its non-liability had previously been determined in the interpleader action. Such a finding would be binding upon the assured as a party to the interpleader. This would deprive All Woods of the insurance protection it had purchased.

In permitting pursuit of judgments and execution of them against All Woods, while enjoining execution against the fund, the District Court strips the assured of protection provided by the insurance policy regardless of the determination of petitioner's ultimate liability. The coverage provided by the policy, held in the District Court pending the outcome of all litigation, is not available as a "buffer," thus All Woods would be compelled to pay all judgments obtained against it from its assets. The coverage, in the form of the fund, if available, could possibly allow All Woods to remain solvent, but All Woods may be driven into bankruptcy if denied the initial protection of the policy.

The decision compels an unusual delay in the disposition of the fund, if All Woods is found liable. A claimant, having filed suit in order to interrupt prescription, may decline to prosecute his claim further. Nevertheless, the fund must remain in the registry of the court for an indefinite period of time resulting in hardship to successful claimants who diligently pursue their causes.

This Court's quotation of Mr. Justice Bradley's comments upon the limitation of liability section of the Admiralty Rules in *Maryland Casualty Company v. Cushing*, 347 U.S. 409 (a limitation proceeding in admiralty), is applicable to the present case. He stated:

> "***The questions to be settled by the statutory proceedings being — First, whether the ship or its owners are liable***and, secondly, if liable, whether the owners are entitled to a limitation of liability — must necessarily be decided by the district court having jurisdiction of the case; and to render its decision conclusive, it must have entire control of the subject to the exclusion of other courts and jurisdictions. If another court may investigate the same questions at the same time, it may come to a conclusion contrary to that of the district court; and if it does (as happened in this case), the proceedings in the district court will be thwarted and rendered ineffective to secure the ship-owners the benefit of the statute.' "[4]

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[4]At page 416.

To permit various courts to decide the questions of liability and damages in the present case would undermine the operation of the congressional scheme for a complete and just disposition of a many-cornered controversy under the Federal Interpleader Act. Conflicting judgments might result and ultimate recoveries vary. As previously noted, if the present actions in various jurisdictions are allowed to continue, the insured will have to face the various claims stripped of its insurance protection.

The statute is not solely for the benefit of the petitioner, it is also designed to protect the injured claimants by insuring that all claimants, not a favored few, come in on an equal footing to obtain a pro-rata share of their damages as Professor Chaffee said:

> "****The company's obligation to defend and its limited duty to pay give it a vital interest in every tort action. It is no interloper in asking a unification of the numerous tort actions brought against the assured. Its request benefits the claimants as well as itself. Instead of a haphazard looting of a fund by the first comers, a bill in the nature of interpleader filed before numerous judgments have ripened assures a fair share of the insurance money to each victim and conforms to the principle 'Equity is equality.'" 45 Yale L.J. 1161 at page 1166, cited at *Underwriters at Lloyd's v. Nichols*, 363 F. 2d 357 (C.A. 8) at page 365.

Maryland Casualty Company v. Glassell-Taylor & Robinson[5] is most analogous to the present case. That case was not commented upon by the lower courts or by this Court in *Tashire.*[6] In *Maryland Casualty Company v. Glassell-Taylor & Robinson,* supra, a bonding company filed a bill in the nature of interpleader which the District Court refused to grant.[7] Upon appeal the Fifth Circuit Court of Appeals reversed[8] after determining that the interpleader statute provided that claimants to a fund who live in other states may be required to litigate in one court so that all claimants, as well as the holder of the fund, may be given protection.

Upon remand, the District Court took jurisdiction pursuant to the instructions of the appellate court, and enjoined *all* suits in *all* courts from proceeding further with any claims that might ultimately affect the fund. The court reasoned that all litigation affecting the issues at hand must ultimately affect the fund itself. This decision is in accord with congressional intent as interpreted by the Court of Appeals:

> "We consider it important that the usefulness of the statutory remedy of interpleader, which has been greatly enlarged by the Interpleader Act of 1936 and by Rule 22 of the Federal Rules of Civil Procedure, *should not be impaired by narrow and restrictive rulings.* In

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[5] 61 F. Supp. 828 (W.D. La.), 156 F. 2d 519 (C.A. 5), on remand 68 F. Supp. 897 (W.D. La).

[6] *State Farm Fire and Casualty Company, et al v. Kathryn Tashire,* 386 U.S. 523, supra.

[7] 61 F. Supp. 828.

[8] 156 F. 2d 519.

such cases where jurisdiction clearly appears, the Federal District Courts do not have the right to decline to exercise that jurisdiction in litigation involving no important question of the public policy of the State." (Emphasis supplied.)*

3. In its original petition Travelers sought a Trial by jury of all issues presented, a right guaranteed by the Seventh Amendment to the Constitution and provided by *Federal Rules of Civil Procedure*, Rule 38, 28 U.S.C. Historically, interpleader actions are of equitable origin, however, the Constitution preserves the right to trial by jury. *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500; *Pan American Fire & Casualty Co. v. Revere*, 188 F.Supp. 474; 2 *Barron & Holtzoff* (Wright Ed. 1961) 251 (Sec. 556). The lower court's decision denied this right by declaring that the distribution of the fund would be controlled by awards granted by the various state and federal courts where suits involving the fund are to be tried.

This determination ignores not only the request for jury trial, but the fact that petitioner filed a bill in the nature of interpleader, not one of strict interpleader. It assumes liability where, in point of fact, liability was specifically denied. As a result, the Court of Appeals has affirmed the District Court's abdication of its responsibilities by allowing other courts to render judgment when it has the duty to do so. This court has said a federal court may not do so. *McClellan v. Car-*

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*156 F. 2d 519, at page 524.

land, 217 U.S. 268. This rule has been recognized by the Court of Appeals, Fifth Circuit. *Maryland Casualty Company v. Glassell-Taylor & Robinson*, 156 F. 2d 519 supra. By assuming liability without a hearing in the District Court, the Court of Appeals' decision ignores problems created as a result of conflicting judgments, some absolving petitioner and its assured of liability, others finding liability and awarding damages.

The lower court's opinion disregards the intent of the Federal Interpleader Act by denying to the petitioner, a liability insurer, certain things it prayed for pursuant to that Act, but granted the petitioner relief which it neither desired nor prayed for. The District Court and the Court of Appeals seemed to classify this action as a bill of strict interpleader rather than a bill in the nature of interpleader. Those courts appear to have decided the issue of liability with no inquiry into the question of liability by a jury. This can result in multiple decisions, possibly conflicting, where a single determination was sought. Another proceeding, added to the many, rather than a single, dispositive action, will increase the confusion rather than clarify the matter, thus there is a denial of due process under the law.

The judgment of the Court of Appeals denies to the petitioner the fundamental fairness implicit in the regular administration of *any* law established for the protection of private rights. Contrary to Daniel Webster's definition of due process,[10] the decision con-

[10] In arguing the *Dartmouth College* case, *The Trustees of Dartmouth College v. Woodward*, 4 Wheat. 518.

demns before hearing, proceeds without inquiry, and renders judgment before trial. Procedural due process is being denied, for petitioner is being found liable before being afforded an opportunity to be heard; not only denied, but denied because petitioner is a "liability insurer," all under the maxim, "the tail should not wag the dog."[11] Under no theory of the law should a liability insurer be required to follow different rules as to application of the Federal Interpleader Act than a person, firm (which would include life insurers), association or society. The interpleader statute must embrace all persons in like situations under basic concepts of due process and equal protection, but here, a particular section of a class is singled out for burdens not imposed upon all in violation of the guarantee of due process afforded by the Constitution.[12]

4. The Court of Appeals held that petitioner was not entitled to have the injunctive relief it prayed for to the extent all defendants be restrained from instituting or prosecuting any action in state or federal court against All Woods, the partners thereof, or any other defendant for the recovery of the sum of the insurance policy. Petitioner submits that is error. It is entitled under the Act to have the District Court enjoin actions against Greyhound and its driver. There is no other court that has jurisdiction over all litigants. In no other court can one judgment decide all issues. In practically all of the cases Greyhound and Travelers

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[11] *State Farm Fire and Casualty Company, et al v. Kathryn Tashire*, 386 U.S. 523, supra.

[12] U.S.C. Const. Amend. 5.

have filed third-party actions against each other. If the case is tried in the United States District Court, Western District of Louisiana, all issues in the main and incidental demands will be tried in one case. As the case presently stands, no injunction was issued prohibiting prosecution of cases against any alleged tortfeasors. No suits were enjoined "affecting the property" or "fund" Travelers deposited, but only as to execution of a judgment against the fund. It cannot be denied that any judgment against Travelers, All Woods, Greyhound, or the latter's driver, could affect Travelers' interest and obligation in this litigation where it has denied liability. Travelers can be affected in several ways by the failure to grant the injunction prayed for, among which is the possibility of a suit against it by its insured, if execution against All Woods is attempted by a judgment creditor.

The petitioner's prayer for the injunction to include petitioner, All Woods, Greyhound and its driver would appear to be in consonance with the holdings in *Treinies v. Sunshine Mining Co.*, 308 U.S. 66, supra; *Austin v. Texas-Ohio Gas Company*, 218 F. 2d 739, *Commercial Union Insurance Co. of New York v. Adams*, 231 F. Supp. 860; *Pan American Fire & Casualty Co. v. Revere*, 188 F. Supp. 474, supra; *Maryland Casualty Company v. Glassell-Taylor & Robinson*, 156 F. 2d 519 (CA 5), supra, as a valid exercise of judicial power in protection of the court's interpleader jurisdiction, which it should accept under the totality of the circumstances herein.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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July 26, 1967.

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CERTIFICATE

I CERTIFY that service of the foregoing petition has been made on respondents' counsel listed below by depositing same in the United States Post Office, Lake Charles, Louisiana, first class (air mail, where applicable), postage prepaid, addressed to counsel of record at his address, in accordance with Rule 33 of the Revised Rules of the Supreme Court of the United States:

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APPENDIX "A"

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

CIVIL ACTION NO. 12,325

TRAVELERS INDEMNITY COMPANY

VS.

GREYHOUND LINES, INC., ET AL

MEMORANDUM RULING ON TRAVELERS PETITION IN THE NATURE OF INTERPLEADER

HUNTER, JUDGE

On August 27, 1965, a tragic highway accident occurred near Vinton, Louisiana. A Chevrolet truck collided with a Greyhound bus carrying 46 passengers. Twelve persons were killed and others were injured, some very seriously. The Truck was owned and, at the time of the accident, was being operated by All Woods, Ltd., a limited Texas partnership. Subsequently, seventeen suits were filed in Texas and nineteen in Louisiana. The total damage alleged exceeds $7,000,000. The Texas suits name as defendants Greyhound and All Woods, the owner of the truck. Louisiana claimants are suing Greyhound, All Woods, and its liability in-

surer, Travelers.[1] In practically all instances Greyhound has filed a third party claim against All Woods.

On September 23, 1966, Travelers filed this petition "in the nature of interpleader," (28 U.S.C.A. 1335a) citing as defendants all potential claimants, including All Woods, Greyhound, and the damage suit plaintiffs. Travelers asks that all of these parties be directed to assert their claims here, and has deposited a bond in the amount of $325,000, representing the face amount of its policy to All Woods. Jurisdiction is sought solely on 28 U.S.C.A. 1335, venue under 1397, and process under 2361. We have some difficulty in divining the exact nature of the relief sought. Does Travelers seek to have the damage claimants enjoined from prosecuting their pending suits against Greyhound and All Woods? A literal reading of the prayer gives us the picture that Travelers merely asks that this fund be distributed to the extent needed to satisfy the claims of the defendants here, subject to being reclaimed upon a finding of non-liability on the part of its assured, All Woods. Petitions for interpleader should be liberally construed. An analysis of the petition, together with briefs, oral argument, and independent inquiry in open court, leaves us with the definite impression that Travelers primarily seeks an injunction ordering all claimants to cease and desist from prosecuting their cases elsewhere, not only against it but also against Greyhound and All Woods. Secondly, if this relief is not forthcoming, Travelers desires an

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[1]Thomas Jefferson Blankenship, the driver of the bus, has been added as a defendant by some of the claimants.

order enjoining the further prosecution of any suits elsewhere against its assured and itself. Thirdly, if that relief is not forthcoming, it would like relief for itself.

On September 26, 1966, all claimants were instructed to show cause on or before October 24, 1966, why pepetitioner should not be granted relief as prayed for. A hearing was held on the latter date, extensive arguments were presented, and numerous briefs were filed. The only question presented at this stage of this proceeding is whether interpleader is available to the insurer, and whether or not the damage suit claimants should be enjoined from prosecuting their pending actions against All Woods and Greyhound, as well as Travelers. Greyhound and All Woods, through counsel, have expressed their concurrence to the effect that the interpleader should be granted, provided it prohibits suit elsewhere against them, too.

The damage suit claimants, in general, are vociferous in their opposition. Mr. Lawes, representing several of those who have filed suit in Louisiana, expressed his sentiments in more or less these words.

> "My people were sitting on the bus, riding along, minding their own business; they were injured, and this is the second time they have been sued! And that is all they were doing—riding on a bus. We think we are entitled to some equitable considerations, too. We think we are entitled to pursue our individual cases in the individual forums that we have chosen,

and we feel no real problems will be involved by proceeding in that manner."[2]

The Texas claimants emphasize that they are not suing Travelers. They assert that the Texas actions are Texas law suits involving only Texans; that the insurance contract between Travelers and All Woods, as well as the contract of transportation, were entered into in Texas. Texas counsel have filed motions to quash service on their clients, alleging the absence of personal service. These motions are not pegged upon an insufficiency of summons, but concern amenability to process. They have two prongs: (1) The Interpleader Act as it is undertaken to be utilized here does not pass constitutional muster; (2) These Texans are not "claimants" to the "fund" within the meaning of the Interpleader Act.

Section 1335 of Title 28 U.S.C.A. provides in pertinent part that:

"The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader * * * if (1) Two or more adverse claimants, * * * are claiming or

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[2]On September 22, 1965, Greyhound instituted suit in Calcasieu Parish, Louisiana. Defendants in that suit were All Woods, Travelers, the driver of the Greyhound bus, and all potential damage suit claimants. That petition sought a declaratory judgment determining the rights, obligations and status of the respective persons and parties. Exceptions were filed and subsequently sustained by the State Court. Specifically, it was held that the Declaratory Judgment Act of Louisiana was not applicable, and that Louisiana courts did not have jurisdiction over the non-resident defendants.

> may claim to be entitled * * * to any one or more of the benefits arising by virtue of any * * * policy * * *."

The threshold question is whether or not the damage suit plaintiffs are "claimants" within the jurisdictional requirements of the statute. Other courts have dealt with substantially the same question but have resolved it differently.[3] Certiorari was granted in *Tashire* on October 11, 1966, and it is apparent that this issue will soon be resolved by the United States Supreme Court. No one suggests that decision here be deferred, pending the outcome of *Tashire*. Without further adieu, we declare our concurrence with those courts holding that interpleader may be resorted to by an insurance carrier where, as here, the adverse claims are unliquidated tort claims against its assured. The key to the clause requiring exposure is in the words "may claim to be." The danger need not be immediate; the possibility will suffice.

Texas claimants concede that if an actual fund has been deposited and the proceeding had been in the

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[3]Holding that persons in a similar category were not claimants are the cases of: Tashire v. State Farm, 363 F. 2d 7 (9 Cir., 1966); National Casualty Co. v. Insurance Company of North America, 230 F. Supp. 619 (N.D. Ohio, 1964); American Indemnity Co. v. Hale, 71 F. Supp. 528 (W.D. Mos, 1947). Standing squarely to the contrary: Pan American Fire & Casualty Co. v. Revere, 188 F. Supp. 474 (E.D. La., 1960); Commercial Union Ins. Co. of N. Y. v. Adams, 231 F. Supp. 860 (S.D. Ind., 1964); Underwriters v. Nichols, 363 F. 2d 357 (8 Cir., 1966). The Louisiana Direct Action Statute is of little import here. The Texas plaintiffs did not sue Travelers and the delay for filing suit against Travelers in Louisiana has elapsed.

nature of a strict bill, quasi in rem jurisdiction could have been obtained over non-residents under 2361. But, the argument is advanced that where, as here, liability is denied, the jurisdiction sought to be obtained is purely in personam, and that the Texas citizens cannot be subjected to personal judgment because of the limitations of the due process clause of the Fifth Amendment. Over and above this constitutional attack another is made, namely, "that the Interpleader Act and its implementing statutes as sought to be effected on the instant case are unconstitutional as being incompatible with the constitutional mandate of Article III, Section 2, Clause 1 of the Constitution." The Supreme Court of the United States, in *Treinies v. Sunshine Mining Co.*, 308 U.S. 66 (1939), held that even though the constitutional language limits the judicial power to controversies wholly between citizens of different states, this requirement was satisfied where the interpleading party showed his disinterestedness as between the claimants by depositing the stock in court and disclaiming any interest in it. *Treinies* is easily differentiated from the instant case where Travelers admits by its complaint that it is not a disinterested stakeholder, and is filing a complaint in the nature of an interpleader where it denies liability altogether. It is argued that here it is evident from the pleadings and argument that the actual controversy is between Greyhound and All Woods on the one hand and the passengers on the Greyhound bus on the other. In *Tashire* the Ninth Circuit declined to pass upon these contentions because of its determination that persons situated as these defendants are not "claimants" under 1335. If—and the if may be a big one—

Tashire is reversed in that particular, then these questions, too, may soon be resolved by the Supreme Court. We deem it not necessary to pass on these constitutional issues because the relief we envision here will in no way impede these Texans from having the personal unlimited liability of the tort feasors determined in the forum of their choice. Has Congress actually provided (in the Interpleader statute) for nationwide service so as to enlarge the jurisdiction of a federal district court to adjudicate the rights of non-residents going beyond a precisely deposited fund, concerning which the interpleader has an adverse interest? Suffice it to say that if statutory construction were simply a question of simple words the answer would have to be in the negative, and 1335 jurisdiction is limited to the fund actually deposited. See Onyx v. Evans Production Corp., 182 F. Supp. 252 (S.D. Tex., 1959).

We have carefully considered the language and the history of the Interpleader statute and find nothing therein which would justify a decree ordering the damage suit claimants to desist from prosecuting their actions elsewhere against Greyhound. Is there anything in the statute, or in equity, which would justify this Court in ordering the damage suit claimants to cease and desist from prosecuting their state court claims against All Woods? We think not. There is no persuasive authority giving to us the right to stay and enjoin proceedings and prosecution of suits against persons not entitled to limit their liability. Except for the decisions of the United States District Court in *Commercial Union Insurance Co. v. Adams,* 231 F. Supp. 860 (S.D. Ind., 1964) and *Tashire,* no case has

been found in which it was sought to utilize the benefits of Interpleader so as to involve multiple tort feasors. In *Adams*, which was in the nature of a "strict bill," all of the insurers, both primary and excess carriers, tendered their coverage into concourse. No such offering has been made here. In *Tashire*, of course, the Ninth Circuit dissolved the restraint entirely.

An action in the nature of interpleader is equitable in nature and controlled by equitable principles. *Texas v. Florida*, 306 U.S. 398, 59 S. Ct. 563 (1939); *Austin v. Texas-Ohio Gas Co.*, 218 F. 2d 739 (5 Cir., 1955); *Holcomb v. Aetna Life Insurance Co.*, 228 F. 2d 75 (10 Cir., 1955), cert. denied 350 U.S. 986; *Elliott v. Federal Home Loan Bank*, 233 F. Supp. 578 (D.C. Calif., 1964). Various counsel for plaintiffs argue that if there ever was a situation in which the equitable principle of laches and stale demand should be applied it is here. It is argued that the coverage by Travelers is minimal in comparison to the entire controversy, and that there is no valid reason tendered for the long delay (13 months) in instituting this proceeding. It would serve no useful purpose to add pages to this memorandum by discussing the various other equitable arguments advanced by counsel for the damage suit claimants in an endeavor to preclude this Court from ordering them to desist from going forward with their actions against joint tort feasors with unlimited liability. Turning to the particular aspects of this case, we are, however, confronted with an extremely strong consideration which militates against applicant, i.e., Travelers, who admittedly has an exposure of only $325,000 would control other state and federal proceedings in which claims exceed

$7,000,000. Conceding the proposition that some of the suits have been filed for more than their judgment value, the fact nevertheless remains that in this accident twelve people died and some thirty other people were injured, most of them allegedly seriously. Unquestionably, the eventual damages from this tragedy, if there is liability, will far exceed Travelers' policy limits. We feel that to allow a party such as Travelers in this situation, who has so little to offer in the way of eventual settlement, to control these proceedings would be highly inequitable to those parties who have actively pursued their cases elsewhere. The fact that a defendant against whom multiple claims are or may be lodged is covered by insurance should not operate to oust jurisdiction of the state courts over suits against other joint tort feasors. To do so would defeat the jurisdiction of state courts merely because one of the parties to such litigation happens to have liability insurance. The position of Travelers is that they are entitled to interpleader, as a matter of right, whenever multiple claims against their assured are in excess of their coverage, and that when such interpleader is filed all actions against its assured, as well as against other joint tort feasors, must be tried in the federal district in which it decides to file its interpleader action. The equitable remedy of interpleader could not have been devised by the chancellor and codified by the Congress to bring about such a result.[4] The short of it is that this, not being a controversy wholly between citizens of different states, jurisdic-

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[4]This is especially true, they argue, where the other joint tort feasors file crossclaims.

tion is only that given by Section 1335 and is limited to the fund actually deposited. *Onyx Refining Co. v. Evans Productions Corp.*, 182 F. Supp. 252 (D.C. Tex., 1959); *Metropolitan Life Insurance Co. v. Enright*, 231 F. Supp. 275 (S.D. Calif., 1964); *Metropolitan Life Insurance Co. v. Chase*, 294 F. 2d 500 (3 Cir., 1961); *Stitzel-Weller Distillery v. Norman*, 39 F. Supp. 182 (W. D. Ky., 1941); *Hagan v. Central Avenue Dairy*, 180 F. 2d 502 (9 Cir., 1950).

Travelers is entitled to deposit its fund (or bond) and have this Court distribute it proportionately to the extent necessary or possible to satisfy any lawful obligations against the fund, subject to the fund being reclaimed upon a finding of non-liability. This Court has ample resources to assure, as appropriate, that it retain exclusive control and power over this fund, and this we can do without depriving the claimants of their valuable right to have the personal unlimited liability of Greyhound and All Woods determined in the forum of their choice. This can be effectively accomplished by enjoining execution against Travelers under any judgment rendered against it until the actions elsewhere have been finally determined and the claims of all are liquidated by judgment.

It could be argued that this same result could best be accomplished by enjoining all suits against Travelers. What would this accomplish? In my judgment, nothing. Travelers is not sued in Texas, and unless one assumed that it will exercise bad faith concerning the handling and processing of the various claims, the only conceivable exposure in excess of the limits of

coverage would be the increased cost of defense. This is not a controlling principle, because the policy requires Travelers to defend the actions brought against its insured. This duty is entirely independent of the obligation to pay, has no relation to the probability of recovery, and does not form the basis of a claim of "multiple vexation." This duty cannot be avoided by an insurer by merely depositing its coverage in the registry of the Court.[5]

CONCLUSION

The various damage suit claimants and cross-complainants are free to pursue their respective actions. However, no judgment is to be executed against Travelers as to the $325,000 policy involved in this litigation except through petition in this Court in this proceeding. That does leave open the question of how long this restriction is to apply. It is our intention to continue this stay of execution against Travelers as to this fund until the other court proceedings have been finalized. Then we would, if All Woods and/or

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[5]Anchor Casualty Co. v. McCaleb, 178 F. 2d 322 (5 Cir., Tex., 1949); American Casualty Co. of Reading, Pa. v. Howard, 187 F. 2d 322 (4 Cir., 1951); Smith v. Insurance Company of State of Pennsylvania, 161 So. 2d 903 (La. App., 1964). See also *8 Appleman Insurance Law and Practice*, Para. 4685. In the Commercial Union Ins. Co. case (S.D. Ind., supra) the insurance company was relieved of its duty to defend, but there, relief was specifically conditioned upon the terms of the policy and upon the fact that the insurance company admitted liability and coverage. It is our understanding that many of the 1966 policies of insurance contain a provision specifically allowing an insurer to be relieved of his obligation to defend upon the surrender of the entire amount of his coverage. No such provision is present here.

Travelers are absolved from liability, permit Travelers to reclaim its $325,000. If, on the other hand, judgments are rendered against Travelers, either directly or through All Woods' coverage, we would proportionately divide the $325,000 among the claimants as their interest may appear. If Greyhound establishes its rights by way of contribution and/or indemnity in the retained "fund", then its proportionate interest could be equitably divided along with other claimants proceeding directly against the fund at the time final judgments are obtained. This relief would protect Travelers against any dangers incident to paying off the first final judgment, and it further avoids a race to final judgment among the various "claimants" to the fund.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, on this the 4th day of November, 1966.

/s/ EDWIN F. HUNTER, JR,
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

TRAVELERS INDEMNITY COMPANY

CIVIL ACTION
VS. NO. 12,325

GREYHOUND LINES, INC., ET AL

JUDGMENT

For written reasons, this day assigned:

IT IS ORDERED that all restraining orders heretofore issued by this Court are hereby dissolved.

However, defendants are enjoined and restrained from execution of any judgments against Travelers for the recovery of the amount of its policy or any part thereof until further orders of this Court. If judgments are rendered against Travelers elsewhere, either directly or through its coverage of All Woods, then this Court will in due course proportionately divide the fund among the claimants as their interests may appear.

RENDERED AND SIGNED this 4th day of November, 1966, at Lake Charles, Louisiana.

(Signed) EDWIN F. HUNTER, JR.
UNITED STATES DISTRICT
JUDGE

APPENDIX "B"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24,210

TRAVELERS INDEMNITY COMPANY,
Appellant,

versus

GREYHOUND LINES, INC., ET AL,
Appellees.

Appeal from the United States District Court for the Western District of Louisiana.

(May 4, 1967.)

Before HUTCHESON, THORNBERRY and DYER, Circuit Judges.

PER CURIAM: As a result of a tragic highway collision in Louisiana between a Greyhound bus and a truck in August, 1965, in which twelve persons were killed and approximately thirty others were injured, numerous suits for damages were filed in various state and federal courts. Seventeen suits filed in Texas state courts named as defendants Greyhound Lines, Inc. (Greyhound), and the owner of the truck, All Woods,

Ltd. (All Woods), a limited Texas partnership. Twenty suits were filed in Louisiana state courts against Travelers Indemnity Company (Travelers), the automobile liability insurer of All Woods, and against Greyhound and All Woods. Several cases were filed in the District Court for the Southern District of Texas. In nearly all instances Greyhound filed a third-party claim against All Woods. The total damages claimed amounted to $7,000,000. Before those cases came to trial, Travelers brought this action in the nature of interpleader in the District Court for the Western District of Louisiana and deposited into court a bond in the amount of $325,000, the limit of its liability under the insurance policy covering All Woods. The relief sought by Travelers was twofold: first, that all potential claimants to the fund—which include the numerous damage suit plaintiffs, Greyhound, and All Woods—be directed to interplead in that court and to assert their claims in the same proceeding; second, that the prosecution of suits in other courts against it, Greyhound, and All Woods be enjoined. Travelers also denied liability and asked for a return of the $325,000 bond upon a finding of nonliability in its favor.

The district court refused the requested relief, holding it lacked statutory authority to enjoin suits against the alleged tortfeasors. Consequently, all parties were left free to pursue their respective claims in the forum of their choice. But the court did grant limited relief with respect to the fund by enjoining execution of any judgment against Travelers until all other proceed-

ings were finalized.[1] Travelers appeals. We conclude that a recent Supreme Court case is controlling and requires us to affirm the judgment of the district court.

In *State Farm Fire & Cas. Co. v. Tashire*, 35 U.S. L. Week 4311, decided April 10, 1967, the Supreme Court resolved important questions concerning administration of the interpleader remedy in the federal courts. As here, that case involved a collision between a Greyhound bus and a truck killing and injuring numerous persons. The insurance carrier, State Farm, sought injunctive relief similar to that which Travelers seeks here.

The Court dealt first with issues concerning the invocation of interpleader jurisdiction under the federal interpleader statute, 28 U.S.C. Sec. 1335.[2] It decided that the language of Sec. 1335 requires no more than " 'minimal diversity', that is, diversity of citizenship between two or more claimants, without regard to the

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[1] 260 F. Supp. 530 (W.D.La. 1966).

[2] 28 U.S.C. Sec. 1335(a) provides: "The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a . . . policy of insurance . . . of value or amount of $500 or more . . . if

(1) Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title, are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any . . . policy . . .; and if

(2) the plaintiff has . . . paid . . . the amount due under such obligation into the registry of the court, there to abide the judgment of the court . . . ."

circumstance that other rival claimants may be co-citizens [and that Article III of the Constitution] poses no obstacle to the legislative extension of federal jurisdiction, founded on diversity, so long as any two adverse parties are not co-citizens." 35 U.S.L. Week 4313. See *Haynes v. Felder*, 239 F.2d 868, 872-875 (5th Cir. 1957). Thus the fact that many of the damage suit plaintiffs are citizens of the same states, Louisiana or Texas, is no bar to the interpleader remedy in the instant case. Likewise, it can no longer be argued that interpleader is unavailable on the ground that damage suit plaintiffs who have not secured judgments do not qualify as "claimants" within the jurisdictional requirements of Sec. 1335. 35 U.S.L. Week 4313-4314. Interpleader was properly brought here even though the claims were in the form of unliquidated tort claims.

Although Travelers invoked the interpleader jurisdiction under Sec. 1335, it nevertheless is not entitled to the relief it asks. In *Tashire*, the Supreme Court determined that while statutory interpleader jurisdiction was invoked, the insurance carrier was not entitled "to an order both enjoining prosecution of suits against it outside the confines of the interpleader proceeding and also extending such protection to its insured, the alleged tortfeasor. Still less was Greyhound Lines entitled to have that order expanded so as to protect itself and its driver, also alleged to be tortfeasors, from suits brought by its passengers in various state or federal courts. Here, the scope of the litigation, in terms of parties and claims, was vastly more extensive than the confines of the 'fund', the deposited proceeds of the insurance policy. In these cir-

cumstances, the mere existence of such a fund cannot, by use of interpleader, be employed to accomplish purposes that exceed the needs of orderly contest with respect to the fund." 35 U.S.L. Week 4314.

The rationale of the holding was further explained. "Here, an accident has happened. Thirty-five passengers or their representatives have claims which they wish to press against a variety of defendants: the bus company, its driver, the owner of the truck, and the truck driver. *The circumstance that one of the prospective defendants happens to have an insurance policy is a fortuitous event which should not of itself shape the nature of the ensuing litigation.* . . . [A]n insurance company whose maximum interest in the case cannot exceed $20,000 and who in fact asserts that it has no interest at all, should not be allowed to determine that dozens of tort plaintiffs must be compelled to press their claims—even those claims which are not against the insured and which in no event could be satisfied out of the merger insurance fund—in a single forum of the insurance company's choosing. There is nothing in the statutory scheme, and very little in the judicial and academic commentary upon that scheme, which requires that the tail be allowed to wag the dog in this fashion." (emphasis added) Ibid.

The Court declared that the insurance carrier's interest, which is the fulcrum of the interpleader procedure, "receives full vindication when the court restrains claimants from seeking to enforce against the insurance company any judgment obtained against its

insured, except in the interpleader proceeding itself." Ibid.

We find no material factual difference between the instant case and *Tashire;* hence, the latter is controlling here. Moreover, we think the judgment of the court below, which granted an injunction only with respect to proceedings against the fund itself, correctly applied, and in fact anticipated, the principles later enunciated in the *Tashire* case. The judgment of the district court[3] therefore is affirmed.

Only a short postscript remains. On November 8, 1966, this Court ordered that a temporary restraining order from the court below would remain in force and effect until further order of the Court. On March 30, 1967, it was ordered that certain actions in state courts were enjoined until the panel to which the case was submitted had an opportunity to consider vacating the order or issuing further orders. Due to the affirmance of the judgment, these previous restraining orders are hereby vacated.

AFFIRMED.

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[3]The district court opinion was cited with apparent approval in *Tashire*. See 35 U.S.L. Week 4315.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1966

No. 24,210

D. C. Docket No. CA 12,325

TRAVELERS INDEMNITY COMPANY,
Appellant,

versus

GREYHOUND LINES, INC., ET AL.,
Appellees.

Appeal from the United States District Court for the Western District of Louisiana.

Before HUTCHESON, THORNBERRY and DYER, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment

of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Travelers Indemnity Company, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

May 4, 1967

Issued as Mandate: May 26, 1967